

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2019-335-T

Application of Affordable Movers SC,
 LLC for a Class E (Household Goods)
 Certificate of Public Convenience and
 Necessity for Operation of Motor Vehicle
 Carrier

MOTION FOR PERMISSION TO
 PRESENT SHIPPER WITNESS
 TESTIMONY BY AFFIDAVIT

Affordable Movers SC, LLC ("Affordable Movers" or "Applicant") moves for permission to present the testimony of its shipper witness by affidavit. The Commission's regulation regarding the proof required to support an application for a Certificate of Public and Convenience and Necessity for a Class E mover of household goods with statewide authority is found in S.C. Code Regs. 103-333.

In certain circumstances, the regulation requires the testimony of a shipper witness to show that an applicant's services will serve public convenience and necessity. In this regard, the regulation states:

PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses, if the applicant applies for authority for more than three contiguous counties. If the commission determines that the public convenience and necessity is already being served, the commission may deny the application. The following criteria should be used by the commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public.

S.C. Code Regs. 103-133.1 (emphasis added)

In the interest of judicial economy, the Commission should allow the Applicant to satisfy the shipper witness requirement by submitting an affidavit of the shipper witness's testimony. In the past, the Commission has allowed applicants to take the testimony of shipper witnesses by deposition to be used at trial. *See e.g.* Application of Gamecock Moving, LLC, Docket No. 2017-103-T. There would be no substantive difference if an applicant were to submit the testimony by affidavit. The Office of Regulatory Staff, or an intervenor, would have the right to contest the adequacy of an affidavit if they believed it inadequate. In addition, the Commission has in recent years allowed the presentation of shipper witness testimony by affidavit on a case-by-case basis. *See e.g.* Application of Midlands Movers, LLC, Docket No. 2018-268-T.

Furthermore, the sufficiency of shipper witness testimony has been rarely challenged since the Supreme Court's holding in Welch Moving & Storage Co. v. Pub. Serv. Com. that anecdotal evidence alone is not enough to challenge the "necessity" prong of an application. Welch Moving & Storage Co. v. Pub. Serv. Com., 301 S.C. 259, 261-62, 391 S.E.2d 556,557 (1990). In Welch, the Court found:

Here, in deciding that grant of a certificate to Welch would not serve the public convenience and necessity, PSC relied exclusively upon the testimony of four licensed carriers from the midlands and upstate regions.

These carriers, potential competitors of Welch, testified that, due to a decrease in business, existing carriers were left with excess capacity to handle a greater number of moves. Additionally, one carrier testified that increased competition would cause cutbacks, resulting in less expensive but inferior quality service.

No expert testimony or statistical surveys were presented to indicate that

the public convenience is being served. The carriers' testimony related primarily to concerns that increased competition would adversely affect their businesses. Although detriment to the income of existing carriers is relevant, it is not determinative and "should not in itself defeat an application for additional services." Id. (citation omitted).

Because of Welch, applicants continue to present shipper witness testimony mainly in order to fulfill the requirements of the regulation; that is, to show that they have "checked the box." Because shipper witness testimony has essentially become perfunctory, Applicant argues that the most economical, efficient, and convenient manner of presenting such testimony is by submission of an affidavit well in advance of the final hearing. Submitting the affidavit in advance would give time for the Commission and staff to review the testimony, submit additional questions, or determine whether further live testimony or deposition of the witness would be appropriate.

Applicant proposes to use the affidavit form attached hereto as Exhibit A as the basis for its shipper witness testimony. This form prompts the shipper witness to testify to the same matters typically covered on the stand or in live testimony.

Therefore, Applicant respectfully requests the Commission allow it to present the testimony of its shipper witness by affidavit.

Respectfully submitted,

s/ Rachel G. McConoughey

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December 4, 2019

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OF SOUTH CAROLINA
DOCKET NO. 2019-335-T
CERTIFICATE OF SERVICE

I, Rachel McConoughey, hereby certify that on this **4th day of December, 2019**, I served the **MOTION FOR PERMISSION TO PRESENT SHIPPER WITNESS TESTIMONY BY AFFIDAVIT** for Affordable Movers, LLC, upon the parties listed below by electronic mail.

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Greenville, South Carolina
December 4, 2019